

## **REMARKS**

### **Examiner interview summary**

Attorney of record Kevin Farrell participated in a telephonic Examiner interview on June 17, 2008 and proposed an amendment to the independent claims that recites the limitation of the anchoring members being produced from an elastic polymeric material not reinforced with an inelastic structural component. Applicant respectfully thanks Examiner Lewis for her time and consideration of proposed claims amendments, and for this opportunity to submit an RCE for review.

### **Amendments to the claims**

Claims 1, 4-20 and 23-38 are currently pending in the application. Independent claims 1 and 20 now incorporate amendments that further clarify Applicant's claimed invention which comprises a first component comprising an anchoring member produced from an elastic polymeric material not reinforced with an inelastic structural component and a second component comprising an anchoring member produced from an elastic polymeric material not reinforced with an inelastic structural component. No new matter has been entered and the original disclosure fully supports the current amendments to the claims. For example, support for the amendments to claims 1 and 20 exists in at least paragraphs [0031] and [0032] of Applicant's Specification, reproduced here in pertinent part for convenience:

[0032]...In an alternative embodiment, the first and second components are not monolithic in nature. This alternative embodiment is based on the recognition that the desired physical properties of the anchoring members and the connecting members are not, in every instance, identical. For example, a degree of elasticity is a desirable feature in an anchoring member when applied, for example, to an area such as a joint. An anchoring member produced from a film having a degree of elasticity is less likely to release prematurely than an anchoring member produced from a substantially inelastic material when applied to such an area.

[0032] ...anchoring members may be produced from stock having a degree of elasticity. Connecting members are produced separately from stock which is substantially inelastic.

Accordingly, reconsideration and withdrawal of the pending rejections are requested in view of the instant amendments and the following remarks.

Rejection Under 35 USC 102(b)

The Examiner has rejected claims 1, 4, 6, 10-12, 18-20, 23, 25, 29-31, 33, 37 and 38 under 35 USC 102(b) as being anticipated by US Patent No. 6,329,564 ("Lebner '564"). More specifically, the maintained rejection is that Lebner '564 anticipates every element of independent claims 1 and 20. On Page 3, the instant Office Action states that, "Lebner discloses that the flat flexible components (first and second anchoring members) and the elongated connectors may be constructed from elastic material which is reinforced with an inelastic structural component thereby rendering the device substantially inelastic. Thus Lebner discloses that the first and second components are produced from an elastic material (inherently a polymer), and that one or more first and second connecting members are produced from a substantially inelastic material, namely, the inelastic structural component that reinforces the elastic material." The retained rejection thus is that Lebner '564 discloses **both** elastic and inelastic material used as the material of construction for the components and the connectors."

Applicant respectfully disagrees and traverses this rejection. Lebner '564 fails to disclose a wound closure device comprising first and second anchoring members produced from an elastic polymeric material not reinforced with an inelastic structural component as recited in at least Applicant's independent claims 1 and 20 as currently amended. In contrast to Applicant's device, the device of Lebner '564 teaches a substantially inelastic device. Column 2, lines 60-66 of the Lebner '564 patent state the following language:

In preferred embodiments, the flat flexible components, elongated connectors, and pulling elements described in the preceding paragraph are produced from a substantially inelastic polymeric material. Alternatively, they may be produced from an elastic material which is reinforced with an inelastic structural component thereby rendering the device substantially inelastic.

At column 2, lines 66-70 and Column 3, lines 1-4 Lebner '564 then recites exemplary inelastic materials and a preferred rigid and inelastic polymer reinforcement material.

For example, such inelastic material may include monofilament polymeric line or

mesh. Reinforcement of the flat flexible components along the wound edge, and of the pulling elements, is preferably done using a material which is both rigid and inelastic (e.g., a rigid polymer is a preferred material for this purpose).

Lebner thus fails to disclose first and second anchoring members produced from an elastic polymeric material not reinforced with an inelastic structural component and instead discloses an inelastic device made either from inelastic material or from elastic material reinforced with rigid, inelastic material. The substantially inelastic device of Lebner '564 thus precludes inclusion of elastic first and second anchoring members without reinforcement by an inelastic structural component.

Applicant respectfully submits that Lebner '564 fails to anticipate independent claims 1 and 20 as currently amended and that claims 1 and 20 are in condition for allowance. Because claims 4, 6, 10-12, 18, and 19 depend from claim 1 and because claims 23, 25, 29-31, 33, 37 and 38 depend from claim 20, these dependent claims are also in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the present rejection.

#### Rejections Under 35 USC 103(a)

The Examiner has rejected dependent claims 5, 7-9, 13, 15-17, 24, 26-28, 32 and 34-36 under 35 USC 103(a) as being unpatentable over US Patent No. 6,329,564 ("Lebner '564"). Because these claims depend from independent claims 1 and 20, Applicant will address this obviousness rejection at the independent claim level.

Applicant respectfully traverses this rejection. As stated above, Lebner '564 fails to disclose first and second anchoring members produced from an elastic polymeric material and instead teaches away from that key feature of Applicant's device. Lebner '564 discloses an inelastic device and means for effectively rendering any elastic material inelastic. In contrast, Applicant teaches a device having first and second components comprising anchoring members produced from an elastic polymeric material not reinforced with an inelastic structural component. This is a non-trivial distinction.

The elastic components of Applicant's device function differently than the substantially inelastic components of Lebner '564 and solve a unique problem left unaddressed by Lebner '564. Whether or not the first and second components of Lebner '564 are made from a single,

substantially inelastic polymeric material or an elastic material reinforced with an inelastic structural component that renders the device substantially inelastic, the first and second components remain inelastic and function as inelastic components. Applicant's specification describes the elastic anchoring member components at paragraph [0031], reproduced here in pertinent part:

For example, a degree of elasticity is a desirable feature in an anchoring member when applied, for example, to an area such as a joint. An anchoring member produced from a film having a degree of elasticity is less likely to release prematurely than an anchoring member produced from a substantially inelastic material when applied to such an area.

Lebner '564 neither teaches nor suggests this key feature of Applicant's invention. In fact, Lebner '564 teaches away from anchoring members produced from an elastic polymeric material for successful application to a flexible area, such as a joint. Instead, Lebner '564 explicitly teaches a substantially inelastic device and provides no motivation for creating Applicant's invention. The substantially inelastic device of Lebner '564 would release from a flexible area, such as a joint, instead of stretching and flexing with the joint so as to remain securely attached. The elastic anchoring members of Applicant's invention thereby create a device having distinct capabilities not taught or motivated by the Lebner '564 reference.

Applicant respectfully submits that Lebner '564 fails to teach or suggest Applicant's invention and in fact teaches away from Applicant's invention as claimed in independent claims 1 and 20 as currently amended. Independent claims 1 and 20 thus are in condition for allowance. Because claims 5, 7-9, 13, 15-17 depend from claim 1 and because claims 24, 26-28, 32 and 34-36 depend from claim 20, those dependent claims are all also in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of this rejection.

Summary

In light of the above amendment, consideration of the subject patent application is respectfully requested. Any deficiency or overpayment should be charged or credited to Deposit Account No. 504514.

Respectfully submitted,



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